IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1252 of 2007()

CC.1275/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER: COMPLAINANT IN C.C.NO.1275/2005

JOHNSON SCARIA, S/O.SCARIA PARACKAL
HOUSE, KANJOOR, ANGAMALY, ERNAKULAM.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SRI.E.M.MURUGAN

RESPONDENTS: STATE AND ACCUSED IN C.C.NO.1275/2005

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. ANIL KUMAR, S/O.SUKUMARAN,
VAZHAYIL HOUSE, PERUMBAVOOR.

3. JOSHY, S/O.SCARIA, PARACKAL HOUSE,
KANJOOR, ANGAMALY.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1252 of 2007

Dated this the 29th day of May, 2007

ORDER

The petitioner is the 2nd accused in a prosecution, inter alia, under Section 420 and 471 I.P.C. That crime was registered on the basis of a complaint lodged by the 2nd respondent before the learned Magistrate, which the learned Magistrate was pleased to forward to the police under Section 156(3) Cr.P.C. Investigation is complete. Final report has been filed arraying petitioner as the 2nd accused and another person (the 3rd respondent) as the 1st accused. The crux of the allegations is that the defacto complainant/2nd respondent herein had handed over a blank signed cheque as security to the petitioner, which the petitioner in collusion with the 3rd respondent had converted into a negotiable instrument/cheque and the 3rd respondent had presented the same and got it dishonoured. Subsequently a prosecution under Section 138 of the N.I Act has been initiated by the 3rd respondent against the 2nd respondent herein.

2. Investigation is complete. Final report has been filed. The petitioner has not entered appearance so far. The learned counsel for the petitioner submits that the prosecution against him is liable to be quashed. What are the reasons ? The learned counsel for the petitioner submits that the petitioner is neither the drawer, payee or

drawee of the cheque and in these circumstances the complaint, which is transparently a counter blast against the 3rd respondent for initiating prosecution under Section 138 of the N.I Act, is not sustainable in so far as the petitioner is concerned.

3. That contention does not at all impress me. The allegation I have already noted is that the petitioner had facilitated the commission of the offence by handing over the blank signed cheque handed over to him as security. In the circumstances of the case the fact that the petitioner is neither the drawer, payee or drawee of the cheque, is according to me, of no significance at least at this stage. I am, in these circumstances, satisfied that the petitioner cannot succeed in this Crl.M.C. The learned counsel for the petitioner then submits that the petitioner is willing to appear before the learned Magistrate and get himself enlarged on bail. The petitioner's application for bail may be considered on merits, expeditiously and in accordance with law. Thereafter the petitioner may be permitted to seek discharge under Section 239/240 Cr.P.C and if the learned Magistrate decides that charges are liable to be framed against the petitioner, he may be exempted from personal appearance. That appears to me to be a very legitimate request. No special or specific directions appear to be necessary.

4. In the result, this Crl.M.C is, dismissed, but with the specific observation that if the petitioner appears and applies for bail his application for bail must be considered by the learned Magistrate on merits, in accordance with law and expeditiously - on the date of surrender itself and his personal presence need be insisted thereafter only if the court chooses to hold that charges are liable to be framed against him. His application, if any filed, for exemption must be considered and disposed of by the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-